Supreme Court, U. S.
FILED
SEP 13 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-107

STATE OF CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES, ET AL.,
Petitioners,

v.

PERVEL INDUSTRIES, INC.,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

THOMAS M. CLOHERTY
MURTHA, CULLINA, RICHTER AND PINNEY
101 Pearl Street
P. O. Box 3197
Hartford, Connecticut 06103
Attorneys for Respondent

Dated: September 11, 1979

INDEX

	Page
QUESTION PRESENTED	1
STATEMENT OF THE CASE	2
THE PASSAGE OF THE PREGNANCY DISABILITY ACT HAS ELIMINATED ANY SIGNIFICANCE TO THE QUESTION PRESENTED	4
THE ERISA IMPROVEMENTS ACT, NOW PENDING BEFORE CONGRESS, DEALS SPECIFICALLY WITH THE PREEMPTION QUESTION	4
CONCLUSION	5
APPENDIX	

TABLE OF CITATIONS

	Page
Bucyrus Erie Company v. The Department of Industry, Labor and Human Relations of the State of Wisconsin et al, 599 F.2d 205 (7th Cir., 1979)	4
Gedulig v. Aiello, 417 U.S. 484 (1974)	2
General Electric Corp. v. Gilbert, 429 U.S. 125 (1976)	2
Nashville Gas Company v. Satty, 434 U.S. 136 (1977)	2
Statutes:	
Connecticut General Statutes § 31-126	2
29 U.S.C. § 1001 et seq., § 1221-1222, § 1144 (The Employee Retirement Security Act of 1974)	4
42 U.S.C. § 2000e et seq. (Title VII of the Civil Rights of 1964)	3
42 U.S.C. § 2000e(k) (The Pregnancy Disability Act of 1978).	3
Other references:	
125 Cong. Rec. 560, (daily ed. January 24, 1979)	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-107

STATE OF CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES, ET AL.,
Petitioners,

v.

PERVEL INDUSTRIES, INC.,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

QUESTION PRESENTED

Did the Employee Retirement Income Security Act, 29 U.S.C. 1001 et seq., (ERISA) preempt Connecticut General Statutes § 31-126 insofar as the state statute imposed requirements for pregnancy disability benefits upon an employee benefit plan regulated by ERISA?

STATEMENT OF THE CASE

Pervel Industries, Inc. and Teamsters Local 798, which represents its production employees, had collectively bargained for an employee welfare benefit plan which was regulated by ERISA. The plan was affiliated with other Tri-State Teamster Plans and also provided for reciprocal coverage and contribution credit with certain "out of town welfare funds."

Two employees applied for benefits during leaves of absences granted because of pregnancy. Medical benefits were granted but certain weekly disability payments were refused. Although, at the time, the Court in *Gedulig v. Aiello*, 417 U.S. 484 (1974), *General Electric Corp. v. Gilbert*, 429 U.S. 125 (1976) and *Nashville Gas Company v. Satty*, 434 U.S. 136 (1977) had concluded that denial of such benefits did not constitute discrimination on account of sex, a Connecticut Commission on Human Rights and Opportunities (CCHRO) representative notified Pervel that the plan's failure to treat pregnancy as a nonoccupational disability constituted sex discrimination which could only be remedied by modification of the plan or the benefits available to employees. Connecticut General Statutes § 31-126(g) prohibits an employer from denying employees "disabled as a result of pregnancy, any compensation to which she is entitled as the result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by said employer."

Pervel then sought declaratory and injunctive relief to halt the state's administrative proceedings. On October 16, 1978, United States District Judge Jon O. Newman entered summary judgment declaring that ERISA preempts Connecticut General Statute § 31-126 insofar as its provisions apply to employee benefit plans subject to ERISA.

The District Court examined the broad sweep of Section 514 of ERISA, 29 U.S.C. § 1144, which provides that, with

the exception of certain specified categories, ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any [covered] employee benefit plan." Since Connecticut's anti-discrimination law legislates specifically on the subject of disability benefits, the Court found it related to an employee benefit plan and was preempted.

The Court specifically rejected CCHRO's contention that Section 514(d) of ERISA, 29 U.S.C. § 1144(d), which preserves *federal* law, saved the application of the Connecticut statute. The Court noted that Connecticut's anti-discrimination law does not become a federal law simply because it it not preempted by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. The Court stated: "Title VII did not create new authority for state anti-discrimination laws; it simply left them where they were before the enactment of Title VII. Whatever is prohibited by Title VII remains prohibited under ERISA, but exclusion of disability benefits for pregnancy does not violate Title VII. *Gilbert*, [supra.]" Thus the District Court found that preemption of Connecticut General Statutes § 31-126(g) by ERISA did not impair any federal law.

On October 28, 1978 the District Court denied CCHRO's Motion for Rehearing to Open and Amend Judgment in view of the subsequent Congressional amendment to Title VII by passage of the Pregnancy Disability Act, 42 U.S.C. § 2000e(k), which, effective April 30, 1979, requires employee benefit plans to treat disability because of pregnancy in the same manner as other disabilities. The District Court noted that its decision did not preclude CCHRO from any benefits it might be entitled to under any new Congressional legislation.

The District Court opinion was affirmed by the United States Court of Appeals for the Second Circuit on April 23, 1979.

THE PASSAGE OF THE PREGNANCY DISABILITY ACT HAS ELIMINATED ANY SIGNIFICANCE TO THE QUESTION PRESENTED

Petitioner's application for a writ of certiorari is based upon a conflict between the decision below and *Bucyrus Erie Company v. The Department of Industry, Labor and Human Relations of the State of Wisconsin et al*, 599 F.2d 205 (7th Cir. 1979) (See Petitioner's Appendix E). However, any conflict which exists has been rendered moot by the passage of the Pregnancy Disability Act.

Both the decision below and *Bucyrus Erie* agree that state anti-discrimination laws "relate" to employee benefit plans within the meaning of ERISA. The only conflict exists on the issue of whether a state law which requires that disability for pregnancy be treated the same as other disabilities is saved from preemption as a "federal law" within the meaning of Section 514(d) of ERISA. 29 U.S.C. 1144(d). However, this conflict has been resolved by the Pregnancy Disability Act's amendment of Title VII which imposes the same requirements with respect to disability as the state statutes involved. Thus the requirements of Title VII no longer differ from the requirements of Connecticut General Statutes § 31-126(g). Therefore, the question presented to the Court has no further public importance and will not recur.

THE ERISA IMPROVEMENTS ACT, NOW PENDING BEFORE CONGRESS, DEALS SPECIFICALLY WITH THE PREEMPTION QUESTION

In enacting ERISA, Congress created a Joint Pension Task Force to study and report the effects and desirability of broad federal preemption. 29 U.S.C. § 1221-1222(a)(4). Thus Congress has created a vehicle to refine the scope of preemption if necessary.

On January 24, 1979, Senator Jacob Javits, a principal architect of ERISA, introduced the ERISA Improvements Act (S.209 reprinted in 125 Cong. Rec. 560, daily ed. January 24, 1979), which deals specifically with ERISA's preemption sections. Thus it would appear that there is no question concerning preemption which needs to be resolved by the Court at this time.

CONCLUSION

Respondent respectfully submits that the question presented has been made moot by the Pregnancy Disability Act. Petitioner has failed to show that any important federal question exists and has not shown any special circumstances to warrant the granting of a writ of certiorari. Thus the petition should be denied.

Respectfully submitted,

THOMAS M. CLOHERTY
MURTHA, CULLINA, RICHTER AND PINNEY
101 Pearl Street
P. O. Box 3197
Hartford, Connecticut 06103
Attorneys for Respondent-Appellee

PROOF OF SERVICE

I, Thomas M. Cloherty, attorney for the Respondent, hereby certify that, on the 12th day of September 1979, I served three copies of the foregoing Response to Petition for a Writ of Certiorari by mailing the same with first class postage prepaid, to counsel of record at their post office address.

Thomas M. Cloherty

APPENDIX

INDEX TO APPENDIX

	Page
Connecticut General Statutes § 31-126(a)	1a
Connecticut General Statutes § 31-126(g)	1a
29 United States Code 1221-1222 [ERISA creation of a Joint Task Force]	2a
29 United States Code 1144 [Section 514 of ERISA]	3a
42 United States Code 2000e-2(a) [Section 703 of Title VII of the Civil Rights Act of 1964]	4a
42 United States Code 2000e(k) [Pregnancy Disability Act]	5a

APPENDIX

Statutes

CONNECTICUT GENERAL STATUTES

Connecticut General Statute, § 31-126(a)

It shall be an unfair employment practice for an employer, by himself or his agent, except in the case of a bona fide occupational qualification or need, because of the race, color, religious creed, age, sex, marital status, national origin, ancestry or physical disability, including, but not limited to, blindness of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against him in compensation or in terms, conditions or privileges of employment;

Connecticut General Statute, § 31-126(g)

It shall be an unfair employment practice for an employer, by himself or his agent, (i) to terminate a woman's employment because of her pregnancy or (ii) to refuse to grant to said employee a reasonable leave of absence for disability resulting from such pregnancy or (iii) to deny to said employee, who is disabled as a result of pregnancy, any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by said employer. Upon signifying her intent to return, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

UNITED STATES CODE

29 U.S.C. § 1221-1222

SUBTITLE B — JOINT PENSION TASK FORCE: STUDIES

PART 1 — JOINT PENSION TASK FORCE

§ 1221. ESTABLISHMENT

The staffs of the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, the Joint Committee on Internal Revenue Taxation, and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate shall carry out the duties assigned under this subchapter to the Joint Pension Task Force. By agreement among the chairmen of such Committees, the Joint Pension Task Force shall be furnished with office space, clerical personnel, and such supplies and equipment as may be necessary for the Joint Pension Task Force to carry out its duties under this subchapter.

§ 1222. DUTIES

(a) The Joint Pension Task Force shall, within 24 months after September 2, 1974, make a full study and review of —

(1) the effect of the requirements of section 411 of Title 26 and of section 1053 of this title to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of such requirements;

(2) means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment under subchapter III of this chapter (relating to termination insurance) of plans established and maintained by small employers;

(4) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans; and

(5) such other matter as any of the committees referred to in section 1221 of this title may refer to it.

(b) The Joint Pension Task Force shall report the results of its study and review to each of the committees referred to in section 1221 of this title.

29 U.S.C. § 1144

OTHER LAWS

Supersedure; effective date

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

Construction and Application

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) of this section shall not apply to any generally applicable criminal law of a State.

Definitions

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivision thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

Alteration, amendment, modification, invalidation, impairment or supersedure of any law of United States prohibited

(d) Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in section 1031 and 1137(b) of this title) or any rule or regulation issued under any such law.

42 U.S.C. § 2000e-2(a)

Unlawful employment practices — Employer practices

(a) It shall be an unlawful employment practice for an employer —

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. 2000e(k)

(k) The terms "because of sex" or "on the basis of sex" include but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided,* That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.